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ABSTRACT

This document was prepared to assist the Wisconsin Legislative Council's Special Committee on Crimes Against Children in its study of current laws relating to crimes against children. It provides the background of the origin of the study and describes the characteristics of the Criminal Code, upon which much of the committee review will center. The section on the study's background explains that the committee was created to examine state laws relating to crimes against children to evaluate whether it would be advisable to reorganize those laws into a separate chapter of the statues and to review those laws to address any major policy issues relating to crimes against children. Included in this section are descriptions of legislation enacted by the 1981, 1983, and 1985 Wisconsin legislatures. The report concludes that offenses involving a child as the victim are scattered throughout the statutes. Statutes both inside and outside of the Criminal Code are briefly reviewed and the Children's Code is explained. (NB)

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WISCONSIN LEGISLATIVE COUNCIL STAFF

INFORMATION MEMORANDUM 86-20

Room 147 North
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July 17, 1986

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BACKGROUND INFORMATION ON CRIMES AGAINST CHILDREN STUDY

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INTRODUCTION

This Information Memorandum was prepared to assist the Legislative Council's Special Committee on Crimes Against Children in its study of current laws relating to crimes against children. This Memorandum gives: (a) the background of the origin of the study; and (b) describes the characteristics of the Criminal Code, upon which much of the Committee review will center.

A. BACKGROUND

In response to a letter from Senator Barbara Ulichny, dated February 12, 1986, the Special Committee on Crimes Against Children was created by the Legislative Council and directed to examine state laws relating to crimes against children to:

(1) Evaluate whether it is advisable to reorganize these laws into a separate chapter of the statutes; and

(2) Review these laws to address any major policy issues relating to crimes against children.

In her letter, Senator Ulichny explained that her interest in the review and reorganization of laws relating to crimes against children resulted from the work of the Legislative Council's Special Committee on Sexual Assault and Abuse, which she chaired from August 1980 to January 1983. This Special Committee developed legislative proposals which dealt with the child victims of sex crimes. The following legislation, based on

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the Special Committee's recommendations, was enacted by the 1981 and 1983 Legislatures:

1. Changing the age, under which a child is legally considered incapable of "consenting" to sexual intercourse or sexual contact for purposes of the sexual assault statute, from 15 to 16 [Ch. 308, Laws of 1981];

2. Establishing statutory authority to use deferred prosecution agreements for the crimes of sexual exploitation of children [s. 940.203, Stats.], sexual assault [s. 940.225, Stats.] or incest [s. 944.06, Stats.] [Ch. 366, Laws of 1981];

3. Recognizing the rights of child victims and witnesses of crimes (1983 Wisconsin Act 197); and

4. Revising the child abuse and neglect reporting law to include additional suspected crimes and making other modifications and clarifications (1983 Wisconsin Act 172).

Following the conclusion of the Special Committee's work, Senator Ulichny discussed with persons at the University of Wisconsin-Madison Law School and Extension the possibility of a review and reorganization of the statutes relating to crimes against children. In response, the Law School undertook a two-year project which resulted in the preparation a preliminary draft proposal, entitled Crimes Against Children: A Proposed Chapter of the Wisconsin Statutes, dated July 1985, prepared by Attorney Ronni G. Jones, under the supervision of a Law School/Extension faculty advisory committee. The draft proposal (hereafter referred to as the "Law School Proposal"): (1) suggests policy changes in the statutes relating to crimes against children; and (2) compiles and reorganizes scattered statutes.

The policy issues raised in the Law School Proposal will be systematically brought to the attention of the Special Committee during the course of its deliberations.

There has been continuing interest in the Legislature in legislation affecting crimes against children. In the 1985 Legislature, a number of proposals were considered. Major enactments included:

1. Funding for the Child Abuse and Neglect Prevention Board (1985 Wisconsin Act 29);

2. Modification of the child abuse and neglect reporting procedures (1985 Wisconsin Act 29);

3. Requiring school boards to provide instruction to pupils and their parents or guardians in recognizing, avoiding, preventing and halting physically or psychologically intrusive or abusive situations that may be harmful to minors (1985 Wisconsin Act 213);

4. Authorizing child abuse restraining orders and injunctions (1985 Wisconsin Act 234); and

5. Revising the current authority and procedure for videotaping statements and depositions by children (1985 Wisconsin Act 262).

A number of other proposals affecting crimes against children did not pass, including bills:

1. Substantially revising the current statute relating to the enticement of children for immoral purposes (1985 Assembly Bill 37 and Senate Bill 18).

2. Increasing the penalty for engaging in sexual acts with minors if the offender is in a position of authority over the child (1985 Senate Bill 142).

3. Extending the statute of limitations for certain offenses against children (1985 Senate Bill 519).

4. Penalizing a parent, guardian or legal custodian who improperly leaves a child under 10-years old unattended in a situation where the child is endangered (1985 Senate Bill 564).

5. Creating a special penalty for the failure to aid a child victim of a crime (1985 Senate Bill 567).

6. Modifying the conditions under which a child may be alleged to be in need of protection or services on the basis of neglect by deleting the requirement that the neglect must seriously endanger the child's physical health (1985 Senate Bill 568).

7. Addressing problems of missing and exploited children by:

a. Creating a reporting procedure for law enforcement agencies;

b. Requiring law enforcement officer training regarding missing and sexually exploited children;

c. Requiring the Child Abuse and Neglect Prevention Board to award grants to organizations that deal with the problems of

missing and sexually exploited children and to promote educational and informational programs regarding these children;

d. Permitting a law enforcement officer to take a child into custody if he or she believes the child may be a victim of a custody interference offense; and

e. Creating a notification procedure relating to certain employes (e.g., public school employes) who are arrested for sex-related offenses (1985 Assembly Bill 623).

8. Prohibiting sheltering and concealing runaway children (1985 Assembly Bill 627).

9. Allowing more than one sexual assault of the same victim to be prosecuted as a single crime (1985 Senate Bill 630).

10. Imposing a court-imposed surcharge to provide grants for incest and child abuse prevention programs (1985 Assembly Bill 863).

B. CHARACTERISTICS OF THE CRIMINAL CODE

Chapter 696, Laws of 1955, revised, reorganized and codified criminal statutes which were scattered throughout the statutes into the current Criminal Code [chs. 939 to 950, Stats], which organizes crimes by the social interest to be protected, as follows:

1. Chapter 939, Crimes--General Provisions;

2. Chapter 940, Life and Bodily Security;

3. Chapter 941, Public Health and Safety;

4. Chapter 942, Reputation and Civil Liberties;

5. Chapter 943, Property;

6. Chapter 944, Sexual Morality;

7. Chapter 945, Gambling;

8. Chapter 946, Government and its Administration;

9. Chapter 947, Public Peace, Order and Other Interests;

10. Chapter 948, Crimes Against Animals;

11. Chapter 949, Awards for the Victims of Crime; and

12. Chapter 950, Rights of Victims and Witnesses of Crime.

As stated above, the substantive crimes set forth in the Criminal Code are organized by the general nature of the social interest protected rather than by the special characteristics of the victim. However, within the general social interest chapters of the Code, the special characteristics of certain crime victims are recognized. For example, the battery statutes recognize the special status of battery by prisoners and battery to law enforcement officers, witnesses, jurors and public officers [s. 940.20, Stats.]. Similarly, separate provisions in ch. 940 (Life and Bodily Security) deal specifically with abuse of children [s. 940.201, Stats.], and sexual exploitation of children [s. 940.203, Stats.].

In addition to codifying the substantive crimes into a separate Criminal Code, Ch. 696, Laws of 1955, limited the scope of the Criminal Code to nonregulatory statutes. In effect, crimes in the Criminal Code are malum in se, a Latin term used in legal parlance to refer to an act which is inherently and essentially evil. The Code does not include crimes categorized as malum prohibitum, a Latin term which refers to an act which is wrong because it is prohibited but which is not inherently immoral or evil. These latter crimes are considered regulatory in nature. Examples of these regulatory statutes, found outside the Criminal Code, include offenses dealing with improper campaign practices [ch. 12, Stats.]; the fish and game laws [ch. 29, Stats.]; the rules of the road [ch. 346, Stats.]; the Uniform Controlled Substances Act [ch. 161, Stats.]; and various statutes licensing and regulating trades, businesses and professions.

The last major revision of the Criminal Code occurred when the 1977 Legislature enacted a penalty classification system for Criminal Code offenses [Ch. 173, Laws of 1977]. The classification system is set forth in s. 939.50, Stats., and consists of five classes of felonies, three classes of misdemeanors and four classes of forfeitures. The classification system does not apply to regulatory offenses covered in statutes outside the Code. In general, criminal offenses are classified, based on the degree of actual or potential harm involved in their commission. The four general standards used to fit existing crimes into the classification structure include:

1. Persons guilty of crimes resulting in death or serious physical harm to others are subject to heavy punishments;

2. Other offenses involving less serious harm to persons generally are considered more serious than crimes against property alone;

3. Given an equal degree of physical harm to persons, crimes involving actual or potential harm to both persons and property are punished more severely than offenses resulting in harm only to persons; and

4. Crimes involving actual or potential harm to a number of people or to the general public are considered more serious than other offenses with a similar degree of harm and more limited in scope or application.

In summary, offenses involving a child as the victim are scattered throughout the statutes. Nonregulatory statutes containing the most serious criminal offenses are contained in the Criminal Code, which is divided into chapters categorized by the general social interest protected. Within these Criminal Code chapters, individual statutes or provisions within statutes treat children specially when they are the victims of a criminal act. The penalty classification system of the Criminal Code is based on the degree of actual or potential harm involved in the commission of a particular offense.

Outside the Criminal Code, numerous regulatory statutes contain offenses which afford special treatment to child victims. These statutes are contained in chapters organized by the subject being regulated (e.g., fish and game, controlled substances and other regulatory topics).

In addition, an entire chapter addresses the special needs of children. Chapter 48, Stats., the Children's Code, was substantially revised in 1977 [Ch. 354, Laws of 1977]. The Children's Code recognizes the unique status of children and the responsibility of the state to assure that appropriate protection, care and treatment services are afforded to both child victims of crimes and child offenders.

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